

SUPREME COURT OF IDAHO

BHA Investments, Inc. v. City of Boise, 141 Idaho 168

108 P.3d 315 (2004) · No. Nos. 30004 & 30409 · Decided February 18, 2004

SUMMARY

The Idaho Supreme Court consolidated appeals concerning Boise's unauthorized liquor-license transfer fee. The court affirmed denial of class certification for BHA Investments and awarded the City attorney fees on that appeal. In the Bravo Entertainment appeal, the court affirmed dismissal of state-law claims but vacated dismissal of the federal Takings Clause claim, holding that the decision invalidating the City's fee applied retroactively and that no notice-of-claim or payment-under-protest requirement barred the federal claim.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Idaho                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Eismann, Justice; Schroeder, Chief Justice; Burdick, Justice; Carey, Justice; Jones, Justice                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Idaho                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | February 18, 2004                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | Nos. 30004 & 30409                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Consolidated appeals from two district court proceedings. BHA appealed denial of class certification after obtaining summary judgment and a refund of its liquor-license transfer fee. Bravo and Splitting Kings appealed summary judgment for the City on claims seeking recovery of a separate transfer fee under state law and the federal Takings Clause. |
| STANDARD OF REVIEW    | Class-certification decisions are reviewed for abuse of discretion. Summary judgment is reviewed under the applicable summary-judgment standard, with the court determining whether the record presents a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.                                             |
| PRECEDENTIAL VALUE    | Published Idaho Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                          |
| PARTIES               | BHA Investments, Inc., Bravo Entertainment, L.L.C., Splitting Kings, L.L.C. v. City of Boise                                                                                                                                                                                                                                                                  |

## TOPICS

class actions summary judgment takings clause statutory interpretation appellate procedure

## PRACTICE AREAS

civil procedure appellate procedure constitutional law municipal law remedies

## QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying BHA's motion for class certification because seventeen known entities did not make joinder impracticable.
2. Whether Boise's unauthorized liquor-license transfer fee constituted a taking of property under the United States and Idaho Constitutions.
3. Whether BHA I applied retroactively to Bravo and Splitting Kings's pending claims.
4. Whether Bravo and Splitting Kings were required to comply with Idaho's notice-of-claim statutes.
5. Whether the fee had to be paid under protest to preserve a refund claim.
6. Whether Bravo and Splitting Kings failed to exhaust administrative remedies.
7. Whether the parties were entitled to attorney fees on appeal.

## HOLDINGS

1. The district court did not abuse its discretion in determining that seventeen known entities located within Boise did not constitute a class so numerous that joinder was impracticable.
2. Because Boise lacked authority to impose the liquor-license transfer fee, its exaction of the fee constituted a taking of property under the United States and Idaho Constitutions.
3. BHA I applies retroactively to Bravo and Splitting Kings's pending case.
4. Bravo and Splitting Kings's state-law claims were barred because the applicable notices of claim were untimely or insufficient.
5. Idaho's notice-of-claim requirements did not bar Bravo and Splitting Kings's federal Takings Clause claim.
6. Payment under protest was not required to recover a fee that the City had no authority to impose.
7. Bravo and Splitting Kings were not barred for failure to exhaust administrative remedies because the City identified no ordinance authorizing the city council to waive the unlawfully imposed transfer fee.
8. The City was entitled to costs and reasonable attorney fees on BHA's appeal, but not fees against Bravo and Splitting Kings; Bravo and Splitting Kings were entitled to costs but not attorney fees.

## KEY QUOTATIONS

*“Money is clearly property that may not be taken for public use without the payment of just compensation.”*  
(141 Idaho at 170; 108 P.3d at 317)

*“If it has no authority to impose any fee at all, it does not matter whether the fee imposed bears a reasonable relationship to the services provided. It is illegal regardless of the amount of the fee.”* (141 Idaho at 173; 108 P.3d at 320)

*“The phrase “reasonably should have been discovered” refers to knowledge of the facts upon which the claim is based, not knowledge of the applicable legal theory upon which a claim could be based.”* (141 Idaho at 172; 108 P.3d at 319)

## FACTUAL BACKGROUND

Boise charged BHA \$8,625 and Bravo \$9,000 to transfer liquor licenses under a city ordinance. BHA paid under protest and pursued a class action; Bravo and Splitting Kings paid the fee without protest and later sought recovery after the Idaho Supreme Court held in BHA I that Boise lacked authority to impose the transfer fee. Seventeen potential class members were identified in the BHA matter, while Splitting Kings was the entity that paid the fee in the Bravo matter.

## PROCEDURAL HISTORY

In the BHA matter, the district court initially dismissed the complaint, but the Idaho Supreme Court reversed in BHA I, holding that Boise lacked authority to impose the transfer fee. On remand, the district court granted BHA summary judgment, denied class certification, and entered judgment for \$8,625 plus prejudgment interest; BHA appealed the certification ruling. In the Bravo matter, the district court granted the City's summary-judgment motion and dismissed the complaint after ruling that the notice-of-claim requirements were unmet, BHA I was not retroactive, and the fee had to be paid under protest. The appeals were consolidated.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The judgment was affirmed as to dismissal of Bravo and Splitting Kings's state-law claims, but the portion dismissing their federal Takings Clause claim was vacated. The federal claim remained for further proceedings in the district court. The BHA judgment was affirmed.

## CASES CITED

- BHA Investments, Inc. v. City of Boise, 138 Idaho 356, 63 P.3d 482 (2003)
- BHA Investments, Inc. v. State, 138 Idaho 348, 63 P.3d 474 (2003)
- Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982)
- Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003)
- Brown v. Legal Found. of Wash., 538 U.S. 216, 123 S. Ct. 1406, 155 L. Ed. 2d 376 (2003)
- San Remo Hotel L.P. v. City & County of San Francisco, 27 Cal. 4th 643, 117 Cal. Rptr. 2d 269, 41 P.3d 87 (2002)
- State v. Tipton, 99 Idaho 670, 587 P.2d 305 (1978)

- Jones v. Watson, 98 Idaho 606, 570 P.2d 284 (1977)
- Thompson v. Hagan, 96 Idaho 19, 523 P.2d 1365 (1974)
- V-1 Oil Co. v. Idaho Petroleum Clean Water Trust Fund, 128 Idaho 890, 920 P.2d 909 (1996)
- Scaggs v. Mutual of Enumclaw Ins. Co., No. 29724, 2005 WL 182841 (Idaho Jan. 28, 2005)
- Mitchell v. Bingham Memorial Hospital, 130 Idaho 420, 942 P.2d 544 (1997)
- Wickstrom v. North Idaho College, 111 Idaho 450, 725 P.2d 155 (1986)
- Felder v. Casey, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988)
- Sweitzer v. Dean, 118 Idaho 568, 798 P.2d 27 (1990)
- First Lutheran Church v. Los Angeles County, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987)
- City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882 (1999)
- Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942)
- Shoup v. Willis, 2 Idaho 108, 6 P. 124 (1885)
- Brewster v. City of Pocatello, 115 Idaho 502, 768 P.2d 765 (1988)
- Owner-Operator Independent Drivers Ass'n, Inc. v. Idaho Public Utilities Commission, 125 Idaho 401, 871 P.2d 818 (1994)
- KMST, LLC v. County of Ada, 138 Idaho 577, 67 P.3d 56 (2003)
- Bryant v. City of Blackfoot, 137 Idaho 307, 48 P.3d 636 (2002)

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